



**DEPARTMENT OF CORRECTIONS  
POLICIES AND PROCEDURES**

Policy No.: DOC 1.3.21	Subject: <b>EMPLOYEE LEAVE, NOTIFICATION OF ABSENCE AND TARDINESS</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 11
Section 3: Personnel	Revision Date: March 8, 2001
Signature: /s/ Bill Slaughter	Effective Date: Sept. 1, 1996

**I. POLICY:**

It is the policy of the Department of Corrections to administer the use and accrual of leave time in a manner consistent with State of Montana law and the appropriate sections of the Montana Operating Manual (M.O.M.). This policy is intended as a supplement to applicable statute and rules and must be used in conjunction with them.

**II. AUTHORITY:**

2-15-112, MCA. Duties and Powers of Department Heads

49-2-310 and 311, MCA. Maternity Leave

19-3-1015 and 1103, MCA. Disability Retiree

2-18-601, MCA. Leave Time Definitions

2-18-603 - 606, MCA. Holidays; Administration of Rules; Sick Pay Plan; and

Parental Leave

2-18-611 - 612, MCA. Annual Leave and Rate Earned

2-18-614 - 622, MCA. Military Leave; Illness; Vacation; Accumulation of

Leave; Sick Leave; Jury Duty; Leave for Employees Holding Public Office;

Unlawful Termination; and Reduction in Force

Montana Operating Manual (M.O.M.), Volume III, Section 3 (as noted in each type of leave)

ARM 24.9.1201. Maternity Leave Rules

53-1-203, MCA. Powers and Duties of Department of Corrections

DOC Policy 1.3.3, Workers' Compensation

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### **III. DEFINITIONS:**

Refer to DOC 1.3.34, Personnel/Payroll Definitions

### **III. PROCEDURES:**

To apply for any type of leave of absence, an employee must complete a standard Employee Request of Leave form and submit it to the immediate supervisor. Leave is ultimately approved or denied in writing.

#### **A. Annual Vacation Leave**

Annual leave is intended for use whenever an employee is approved to take time away from work to engage in leisure time activities of their choosing or attend to personal business. Annual Vacation Leave will be accrued and granted in compliance with this policy and M.O.M. 3-0305.

An employee, who terminates for reasons other than lay-off, shall not be allowed to extend their termination date with accrued annual leave. All accrued annual leave shall be paid out upon termination, unless forfeited under M.O.M. 3-0305.

#### **B. Sick Leave and Sick Leave Fund**

Sick Leave is intended for use whenever a legitimate circumstance exists which permits use of sick leave accrual. Sick Leave may be accrued and granted in compliance with this policy, M.O.M. 3-0301, 3-0311 and 02-93 Sick Leave Guide.

1. Sick leave can only be granted for its intended purpose and will be limited to the amount of accrual. Accrued sick leave shall be utilized by an employee prior to the use of leave without pay. Only at the request of the employee shall annual leave, holiday time, or compensatory time be used in place of accrued sick leave.
2. Employees required to provide medical documentation/release associated with the use of sick leave must provide such documentation on the approved Department form.

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3. Sick leave requests for physician/licensed practitioner appointments shall be approved by the supervisor in advance, unless the appointment is of an emergency nature. Twenty-four to forty-eight hours are a reasonable amount of advance notice for a non-emergency appointment. The amount of sick leave approved for an appointment shall be based on the type of appointment and the geographical location.
4. Requests to use sick leave involving stress as the sole factor for use of leave require documentation from a licensed psychologist or psychiatrist stating that the employee suffers from a stress-related mental illness diagnosable on DSM IV. Where stress creates physical manifestations, the leave shall be approved upon receiving documentation from a licensed physician regarding the need for the use of sick leave. No sick leave request involving stress shall be approved by a supervisor without the documentation described above.
5. Sick leave requests for funeral attendance must be approved by the supervisor in advance. The amount of sick leave approved for funeral attendance shall be commensurate with the geographical location of the funeral.
6. All other sick leave requests must be submitted within the time frames established by local management.
7. Employees who fail to request sick leave as required by policy will be denied the use of paid leave for the day(s) in question and will be subject to progressive disciplinary action unless the failure to request leave is attributable to circumstances beyond the employee's control.
8. Employees who, without prior notice, report to work late because of illness may be denied the opportunity to work that shift after notification by their supervisor.

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9. Employees who request to use sick leave may be required to obtain a release to return to work on the approved Department form. If a supervisor requests a release, the request shall be made by the supervisor at the time the employee requests the leave of absence or with ample notice before the employee returns to shift.

C. Sick Leave Abuse

1. If a supervisor, at the time sick leave is requested for an illness, questions validity, the supervisor will inform the employee that medical documentation will be required before sick leave is approved.
2. If a supervisor suspects an employee is abusing sick leave, the supervisor will require that the employee provide documentation on the approved Department form. The supervisor shall require that each subsequent request for sick leave be accompanied by medical documentation on the approved Department form prior to being approved. This condition can be imposed for up to 90 calendar days and reimposed in 90-day increments, if necessary.
3. A supervisor who documents sick leave abuse by an employee shall deny the use of sick leave for the period of time in question and shall implement progressive disciplinary action.
4. Any employee who fraudulently obtains medical documentation, or who in any way presents medical documentation which is not authentic, is subject to disciplinary action.
5. Time lost because of sick leave abuse will be charged as unexcused leave without pay.
6. A supervisor will only require documentation where there is reason to suspect sick leave abuse or the employee is unfit for service.

D. Parental Leave

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Parental Leave is a reasonable leave of absence if an employee is adopting a child or the employee is the birth father. It does not create an additional category of paid or unpaid leave and is granted in compliance with M.O.M 3-0312.

E. Disability and Maternity Leave

Disability and Maternity Leave is a reasonable leave of absence due to a disability. It does not create an additional category of paid or unpaid leave and is granted in compliance with M.O.M. 3-0315 and A.R.M. 24.9.1201, Maternity Leave Rules.

F. Disaster and Emergency Leave

Disaster and Emergency Leave is paid time off not charged to an employee's accrued leave or compensatory time for an employee affected by a disaster or emergency as declared by the Governor. Disaster and Emergency Leave will be granted in compliance with M.O.M. 3-0320.

G. Military Leave

Military Leave provides paid time off to eligible employees in compliance with this policy and M.O.M. 3-0321 and State of Montana Military Leave Guide.

Weekend drills. Time off for weekend training drills shall normally be provided. Military Reserve Employees shall give their supervisors their annual schedule of drills in October of each year. The supervisor shall schedule a military reserve employee off for those drills whenever possible. If a conflict arises, the supervisor shall work with the employee and the Military Company Commander requesting the employee have an opportunity to "make up" the scheduled drill. If an acceptable alternative cannot be concluded, time off for a weekend training drill may be denied, in the event of an emergency which requires the services of the employee.

H. Jury Duty and Witness Leave

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Jury Duty and Witness Leave will be granted in accordance with M.O.M. 3-0322. To apply for Jury or Witness Leave, an employee completes a standard request for leave form and submits it to the immediate supervisor. Leave is ultimately approved or denied in writing.

I. Holidays and Holiday Pay

Holidays, holiday benefit and holiday pay will be granted in accordance with this policy and M.O.M. 3-0325.

1. The holiday period begins at 12:00 a.m. and ends at 11:59 p.m. on the dates listed as holidays in M.O.M. 3-0325.
2. FLSA Exempt employees who are required to work during the 24-hour legal holiday period shall:
  - a) accrue one hour "Holiday Accrual in Lieu of Pay" for each hour actually worked within the 24-hour period, up to a maximum of eight and subject to the prorate provision of M.O.M. 3-0325;
  - b) receive compensation at their regular hourly rate for each outstanding "Holiday Accrual in Lieu of Pay" hour on June 30 of each fiscal year. Such compensation will be provided on the first payday after the pay period, which includes June 30.
3. FLSA nonexempt employees who are required to work during the 24-hour legal holiday period shall:
  - a) accrue one hour "Holiday Accrual in Lieu of Pay" for each hour actually worked within the 24-hour period, up to a maximum of eight and subject to the prorate provision of M.O.M. 3-0325;
  - b) receive compensation at the premium rate for all hours worked within the 24-hour period;

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- c) receive compensation at their regular hourly rate for each outstanding "Holiday Accrual in Lieu of Pay" hour on June 30 of each fiscal year. Such compensation will be provided on the first payday after the pay period, which includes June 30.

J. Leave of Absence without Pay

Employees are eligible to apply for a leave of absence without pay in compliance with this policy and M.O.M. 3-0330.

1. A leave of absence without pay may be granted after all other appropriate earned leave has been exhausted. An employee may not be required to utilize annual leave or FLSA compensatory time for an illness. A leave of absence without pay shall be granted for good and sufficient reason, such as extended illness, family emergency or continuing education of benefit to the Department.
2. A leave without pay for medical purposes must be supported by a physician's statement of prognosis and expected duration.
3. Request for a leave of absence without pay for three calendar months or less must be submitted to Wardens and Superintendents through the supervisory chain of command. Requests for leave of absence without pay over three calendar months must be approved by the Division Administrator through the supervisory chain of command. In emergency situations, oral permission may be granted and written authorization completed at a later date.
4. Reemployment to the employee's position at the completion of the leave without pay is based upon the following rule:
  - probationary employee: position is not held open;
  - six months to one year of employment: position is held open for one calendar month;
  - one to two years of employment: position is held open for two calendar months;
  - two to three years of employment: position is held open for three calendar months;

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- three to four years of employment: position is held open for four calendar months;
- four to five years of employment: position is held open for five calendar months;
- more than five years of employment: position is held open for six calendar months.

5. If the absence is in excess of six months, the employee may be guaranteed, for a period not to exceed one year from the beginning of the leave, reemployment into the first available position similar to the position previously held or to a position of similar compensation the employee qualifies for. The employee has ten working days from date of notice to accept the employment offer. The employer shall make offers of reemployment in writing by certified mail. One bonafide offer, which is rejected or not acted upon by the employee, will waive further employer obligation.

6. Extended leaves of absence should not be granted during the probationary period of employment unless there are exceptional circumstances.

K. Leave of Absence Due to an Industrial Accident

Employees shall be granted a leave of absence due to an Industrial Accident under the provisions outlined in DOC Policy 1.3.3, Workers' Compensation.

L. Family Medical Leave Act (FMLA)

Employees are entitled to 12 weeks of unpaid family and medical leave. The 12 weeks are renewed each year and the year starts when the employee uses or is credited with usage. FMLA will be requested and utilized in compliance with this policy, M.O.M., Family and Medical Leave Guidelines for Montana State Government Employees and FMLA Federal Regulations Part 825.

1. To be eligible for the leave, employees must have worked for the facility/program for at least 1040 hours in the previous 12 months.
2. A leave of absence up to 12 weeks must be granted for one or more of the following reasons:

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- a) for the birth or placement of a child with the employee for adoption or foster care
  - b) to care for an immediate family member (spouse, child or parent) with a serious health condition
  - c) to take medical leave when the employee is unable to work because of a serious health condition
  
3. For a leave of absence that exceeds three working days for one of the reasons stated above, the Department may charge appropriate leave toward the 12 weeks per year of Family and Medical Leave. The employee cannot be required to utilize annual leave or FLSA compensatory time for an illness. In such cases the Department will request the employee to complete the medical certification and request forms. The Department does not need the concurrence of the employee to charge the time to the Family Medical Leave allotment. In no case can an employee's paid leave be credited as FMLA leave after the leave has been completed. FMLA leave and any other leave can be used concurrently. All of the leave time taken regardless of whether or not it is covered by accrued paid leave should be charged to FMLA leave.
  
4. Time off for workers compensation will be considered FMLA leave, and an employee will be eligible to have the State share of group insurance paid for a 12-week period.
  
5. During any FMLA leave, the Department must maintain the State share of health insurance, which may be up to 12 weeks per year. If the employee is on a FMLA leave a portion of a pay period, the State share for the entire pay period will be covered.
  
6. Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

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7. The Department must post a notice for employees explaining rights and responsibilities under FMLA.
8. If a holiday falls during the FMLA leave, that workday will not count as part of the 12 weeks FMLA leave. The employee will not receive pay for the holiday unless in a pay status before or after the holiday.
9. Employee's Responsibilities:
  - a) each employee applying for FMLA or requested to utilize FMLA will be required to complete the State of Montana Request for Family and Medical Leave, and the employee's health care provider will complete the State of Montana Medical Certification form;
  - b) the employee must provide 30 days advance notice when the leave is foreseeable. When advance notice is not practical, the employee is expected to make the request as soon as possible;
  - c) an employee who has been on FMLA leave may be asked to provide a medical release before resuming work.

M. Notification of Absence

Regular attendance is a condition of employment and is expected of all nonexempt employees.

Absences from work without prior approval require notice to the employee's immediate supervisor and a justifiable reason for the absence.

1. Call offs are accepted for illness and emergencies. All other short notice requests for time off are treated as any other leave requests and are approved on the basis of available relief personnel and the needs of the Department.

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2. Unless there is another procedure specifically outlined by the supervisor, an employee who will be absent without prior approval must call the supervisor or designee within 30 minutes of the start of the shift.
3. Failure to meet the requirements of giving adequate notice to the supervisor may justify discipline, regardless of the merits of the cause for the absence.
4. The employee is responsible for filling in an Employee Leave Request Form the first day following the return to work.

N. Tardiness

As a condition of employment, all nonexempt employees are expected to arrive at work promptly when scheduled. If an employee realizes that due to an unavoidable situation he or she will be late for work, the employee has an obligation to notify the supervisor. If the time lost from work exceeds a grace period of six minutes, and the time is not made up during that shift, the employee is responsible for completing an Employee Request for Leave form in order to adjust the payroll. If this grace period is abused or the unexcused absences become excessive in number, discipline measures will follow.

V. **CLOSING:** Questions concerning this policy should be directed to the immediate supervisor.